

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ 1ST DRAFT ~

Meeting Summary
Motor Vehicle Dealer Board
Monday, November 10, 2003

Vice-Chairman Rick Hunt called the Dealer Board meeting to order at 12:55 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 12 members present. Present were members Bobby Joe Dotson, Steve Farmer, Todd Hyman, Clyde King, Hugh McCreight, Pat Patrick, Max Pearson, Frank Pohanka, Ted Robertson, Chris Schroeder and Leo Trenor. (Absent: D. B. Smit, Carlton Courter, James Mitchell, Larry Shelor, Vince Sheehy and Robert Woodall). Bruce Gould, Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Glenn Harlowe represented DMV. Rick Walton represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The September 8, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

STATUTORY COMMITTEE REPORTS:

Dealer Practices Committee:

Chairman Todd Hyman summarized discussions held and actions that were taken during the Committee Meeting.

- **James C. Pauley and Kiln Creek Auto Sales.** Chairman Todd Hyman summarized for the Board the discussion held in the Committee meeting regarding James C. Pauley and Kiln Creek Auto Sales. Based on that discussion and the recommendation in the case, Mr. Hyman made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Mr. James C. Pauley t/a Kiln Creek Auto Sales for alleged violations of Va. Code § 46.2-1575 (2), failure to comply subsequent to receipt of a written warning and willful failure to comply with the dealer laws, and §§ 46.2-1529, 46.2-1530, 46.2-1532, 46.2-1542, 46.2-1548, 46.2-1561, 46.2-1550 and 46.2-1550.2, related to record keeping requirements and Va. Code § 46.2-1537, compensating an individual, who is not licensed by the dealership, in the connection of the sale of a motor vehicle. Mr. Pauley received numerous letters, educational efforts and opportunities to comply with the record keeping requirements; based on due consideration, and the hearing officer's recommendation, the Board believes that a civil penalty should be levied against Mr. James C. Pauley t/a Kiln Creek Auto Sales. The Board hereby assesses a civil penalty in the amount of \$500 for violations of Va. Code §46.2-1537, compensating an unlicensed individual and \$2,500 for violations related to record keeping for a total civil penalty of \$ 3,000 on Mr. James C. Pauley t/a Kiln Creek Auto Sales.

Leo Trenor seconded. The motion carried unanimously.

Licensing Committee:

Chairman Bobby Joe Dotson summarized discussions held and actions that were taken during the Committee Meeting.

- **Todd K. Keyser t/a Select Wheels.** Chairman Bobby Joe Dotson summarized for the Board the discussion held in the Committee meeting regarding Todd K. Keyser t/a Select Wheels. Based on that discussion and the recommendation in the case, Mr. Dotson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Mr. Todd Kyser t/a Select Wheels for alleged violations of Va. Code §§46.2-1510, 46.2-1515, 46.2-1516 and 46.2-1575 (3), requiring the licensing of any location from which a dealer conducts sales activity; and 46.2-1575(9) having been convicted of a criminal act involving the business of selling vehicles. Based on due consideration, and the hearing officer's recommendation, the Board believes that a civil penalty should be levied against Mr. Todd Kyser t/a Select Wheels. The Board hereby assesses a civil penalty in the amount of \$700 on Mr. Todd Kyser t/a Select Wheels for violations related to zoning requirements and established place of business and \$300 for having been convicted of a criminal act involving the business of selling vehicles for a civil penalty totaling \$1,000.

Frank Pohanka seconded. The motion passed unanimously.

- **Ernest M. Pazmany.** Chairman Bobby Joe Dotson summarized for the Board the discussion held in the Committee meeting regarding Ernest M. Pazmany. Based on that discussion and the recommendation in the case, Mr. Dotson made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the application for a salesperson license for Mr. Ernest M. Pazmany pursuant to Va. Code 46.2-1575(13), having been convicted of a felony. Mr. Pazmany appealed the denial and requested a formal hearing; and the Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Mr. Ernest M. Pazmany and based on due consideration, the Board believes that Mr. Brantley's motor vehicle salesperson's license should be issued. The Board hereby approves the application for a salesperson license submitted by Mr. Ernest M. Pazmany.

Clyde King seconded. All in favor: 11 (Dotson, Farmer, Hyman, King, McCreight, Patrick, Pearson, Pohanka, Robertson, Schroeder, Trenor) Opposed: 1 (Hunt). The motion passed.

Motion was made by Steve Farmer to reconsider the motion. Leo Trenor seconded. All in favor: 11 (Farmer, Hunt, Hyman, King, McCreight, Patrick, Pearson, Pohanka, Robertson, Schroeder, Trenor). Opposed: 1 (Dotson). The motion passed. General discussion followed.

Motion was made by Bobby Joe Dotson to accept the hearing officer's recommendation. Leo Trenor seconded. All in favor: 10 (Dotson, Hyman, King, McCreight, Patrick, Pearson, Pohanka, Robertson, Schroeder, Trenor). Opposed: 2 (Hunt, Farmer). The motion passed.

Advertising Committee:

Vice-Chairman Ted Robertson summarized discussions that were held during the Committee Meeting.

- **Jeffrey E. Cappel and Victory Nissan of Chesapeake.** Vice-Chairman Ted Robertson summarized for the Board the discussion held in the Committee meeting regarding Jeffrey E. Cappel and Victory Nissan of Chesapeake. Based on that discussion and the recommendation in the case, Mr. Robertson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Jeffrey E. Cappel t/a Victory Nissan of Chesapeake, for alleged repeated violations of 24 Virginia Administrative Code Section 22-30-30(D)(1) which provides that advertisements must meet the Federal Trade Commission Truth in Lending Act Requirements, VA Code Section 46.2-1575(2) failing to comply with a written warning/willful failure to comply with the dealer laws and 46.2-1457.5(7) knowingly advertising something that you know is untrue, misleading or deceptive. Based on due consideration, and the recommendation of the hearing officer, the Board believes a civil penalty should be levied against Jeffrey E. Cappel t/a Victory Nissan of Chesapeake. The Board hereby assesses a civil penalty in the amount of \$1,000 on Jeffrey E. Cappel t/a Victory Nissan of Chesapeake for violations of 24 Virginia Administrative Code Section 22-30-30(D)(1).

Hugh McCreight seconded. All in favor: 11 (Dotson, Farmer, Hunt, Hyman, King, McCreight, Patrick, Pearson, Robertson, Schroeder, Trenor). Opposed: 1 (Pohanka). The motion passed.

- **Edward H. Fellers t/a Fellers Chevrolet Oldsmobile.** Vice-Chairman Robertson summarized for the Board the discussion held in the Committee meeting regarding Fellers Chevrolet Oldsmobile. Based on that discussion and the recommendation in the case, Mr. Robertson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Edward H. Fellers t/a Fellers Chevrolet Oldsmobile, for alleged violations of VA Code Section 46.2-1581(8) and 24 Virginia Administrative Code Section 22-30-10 which provides that advertisements that state a price must fully identify the vehicle, VA Code Section 46.2-1575(6) having used deceptive acts or practices and 46.2-1575(7) knowingly advertising something that you know is untrue, misleading or deceptive. Based on due consideration, and the recommendation of the hearing officer, the Board believes a written warning should be issued to Edward H. Fellers t/a Fellers Chevrolet Oldsmobile. The Board hereby directs the executive director to issue a written warning to Edward H. Fellers t/a Fellers Chevrolet Oldsmobile for violations of VA Code Section 46.2-1581(8) and 24 Virginia Administrative Code Section 22-30-10.

Pat Patrick seconded. The motion passed unanimously.

- **Art Casey and Casey Automotive Group.** Vice-Chairman Robertson summarized for the Board the discussion held in the Committee meeting regarding Art Casey and Casey Automotive Group. Based on that discussion and the recommendation in the case, Mr. Robertson made the following motion: The Board has reviewed and considered the facts and evidence in the report of an informal fact-finding conference as prepared by the hearing officer concerning Art Casey and Casey Automotive Group for alleged violations of VA Code Sections 46.2-1581.4, terms, conditions and disclaimers must be stated clearly and conspicuously, 46.2-1581.9, advertisements which set out policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable, 46.2-1581.10, prohibiting advertisements of dealer rebates, 24 VA Administrative Code Section 22-30-10, VA Code Section 46.2-1575.6 having used deceptive acts or practices, 46.2-1575.7 knowingly advertising something that you know that is untrue or misleading or deceptive. Based on due consideration and recommendation of the hearing officer, the Board believes a written warning should be issued to Casey and Casey Auto Group. The Board hereby directs the Executive Director to issue a written warning to Art Casey for violations of VA Code Section 46.2-1581.4,9,10 and 24 VA Administrative Code Section 22-30-10.

Leo Trenor seconded.

Substitute motion made by Frank Pohanka to separate the issue into three (3) issues (Rebate, Deceptive Practices and Meet/Beat Any Deal). Pat Patrick seconded. All in favor: 10 (Dotson, Farmer, Hunt, Hyman, King, McCreight, Patrick, Pearson, Pohanka, Schroeder). Opposed: 2 (Trenor and Robertson). The motion carried.

Motion was made by Frank Pohanka to indicate that the alleged Rebate issue is NOT a Dealer Rebate. Pat Patrick seconded. All in favor: 8 (Dotson, Hunt, Hyman, King, Patrick, Pearson, Pohanka, Schroeder). Opposed: 4 (Farmer, McCreight, Robertson, Trenor). The motion passed.

Motion was made by Frank Pohanka to indicate that this issue is NOT deceptive acts or practices. Clyde King seconded. All in favor: (King, Pohanka). Opposed: Dotson, Farmer, Hunt, Hyman, McCreight, Patrick, Pearson, Robertson, Schroeder, Trenor). The motion failed.

Motion was made by Ted Robertson to accept the hearing officer's recommendation of deceptive acts or practices. Hugh McCreight seconded. The motion carried unanimously.

Motion was made by Ted Robertson to accept the hearing officer's recommendation on the issue of Meet or Beat Any Deal. Frank Pohanka seconded. The motion carried unanimously.

Transaction Recovery Fund Committee:

Chairman Steve Farmer summarized discussions held and actions that were taken during the Committee Meeting.

- **Alicia D. Toler and Automax Sales, Inc.** Chairman Farmer summarized for the Board the discussion held in the Committee meeting regarding Alicia D. Toler and Automax Sales, Inc. and reported that the Committee voted to accept the hearing officer's recommendation. Discussion followed and based on that discussion, Mr. Farmer made the following motion: Pursuant to Section 46.2-1527.1 et seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered claims submitted for payment from the Fund, and based on due consideration and recommendation of the agency representative, the Board believes the following claims should be approved. The Board hereby reaffirms the approval of the following claim and amount:

Claimant:	Vehicle:	Amount:
Alicia D. Toler	1998 Honda	\$16,667.29

Ted Robertson seconded. The motion passed unanimously.

OLD BUSINESS FROM THE FLOOR

There was no other old business from the floor.

NEW BUSINESS

- **Composition of the Board.** Rick Hunt indicated that some individuals have indicated that they would like to see a change the in composition of the board by either adding 2 more used car seats or delete the salvage and rental requirements so that they were just independent dealer seats. It was his belief that there was nothing wrong with the current requirements and composition of the Board.

Motion was made by Max Pearson to leave the Composition of the Board the way it is now. Clyde King seconded. All in favor: 10 (Dotson, Farmer, Hunt, King, McCreight, Patrick, Pearson, Pohanka, Robertson, Schroeder). Opposed: 2 (Trenor and Hyman). The motion carried.

Philip Vasquez announced that DMV just hired an attorney with some franchise hearing experience and another attorney position has been posted.

Executive Director's Report. Bruce Gould indicated that the Governor announced Friday the appointment of David Lacy to fill the position of independent dealer and salvage dealer. Mr. Lacy will be at the January meeting. He also reported that the Dealer Database look-up is successful and so far, to date, the website has had 975 look-ups. Also, a conference of the Executive Director's peers was held 2 weeks ago and it was a very successful workshop and starting in January, he was elected President of this group.

The next meeting will be scheduled for January 12, 2004.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairman Hunt adjourned the meeting at 1:54 p.m.

Meeting Summary
Dealer Practices Committee
Monday, November 10, 2003

Chairman Todd Hyman called the Dealer Practices Committee meeting to order at 8:33 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were members: Bobby Joe Dotson, Clyde King, Hugh McCreight, Pat Patrick, Frank Pohanka, Ted Robertson, Chris Schroeder. (Absent: Vince Sheehy, James Mitchell and Robert Woodall) Other members present: Leo Trenor, Rick Hunt, Steve Farmer, Max Pearson. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Glenn Harlowe was present from DMV. Rick Walton was present from the Attorney General's Office.

The September 8, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: September Actions. Peggy Bailey reported that at the Dealer Practices Committee meeting on September 8, 2003, the Committee considered the hearing officer's report on the following dealerships and a resolution was passed: After an informal fact-finding conference was conducted the Board reviewed and considered the facts and evidence and passed a resolution to assess a civil penalty of \$300 against Mr. George H. Lovelace and D & K Auto Sales for a violation of Va. Code §46.2-1575(9) having been convicted of any criminal act involving the business of selling vehicles. Mr. Lovelace was notified of the Board's decision in a letter dated September 29, 2003. He was given until October 31, 2003 to pay the civil penalty or appeal. On October 28, 2003, the Board received the \$300 civil penalty. The Board passed a resolution after having considered the facts and evidence of an informal fact-finding conference involving three violations of Va. Code §46.2-1537, compensating an individual, who is not licensed by the dealership, in connection with the sale of a motor vehicle. The resolution was to assess a civil penalty of \$300 against Margie M. Greer of Margie's Auto Sales. Ms. Greer was notified of the Board's decision in a letter dated October 1, 2003. She was given until November 3, 2003 to pay the civil penalty or appeal. As of this date, she has not paid the civil penalty and if not paid, she will be place in the Debt Set-Off Program.

OLD BUSINESS FROM THE FLOOR

- **Eddie Mayo and Premier Auto Sales.** Debbie Allison reported that as of October 15 of this year, Mr. Mayo was put out business recently the FBI called Ms. Allison indicating that Mr. Mayo is incarcerated and his bond was revoked because of his continued E-bay activities. He had opened another account and had started selling again; despite an agreement he had with the FBI to discontinue selling cars on Ebay. His sentencing date is November 21 and he will remain incarcerated until that date. They anticipate that he will get 3 to 5 years and remain in jail until his full sentence is served.

NEW BUSINESS

- **Ebay Motors Business Model** – Joseph Sullivan, Sr. Counsel, Trust & Safety, Ebay, Inc. conducted a power point presentation regarding the buying and selling of vehicles on the internet

by licensed dealers. Before his presentation, he indicated that his company and the FBI are working together in relation to the Premier Auto Sales issue. General discussion followed on whether or not this type of selling is in violation of the Virginia Code.

Consensus of the Committee is to table this issue until the January meeting, giving members of the Committee more time to study the issue.

Review and Action: Informal Fact-Finding Conferences:

- **James C. Pauley and Kiln Creek Auto Sales.** An informal fact-finding conference was conducted on August 14, 2003 referencing James C. Pauley and Kiln Creek Auto Sales for the alleged violations of VA Code Sections 46.2-1529 (failure to maintain required records), 46.2-1537 (permitting sales activities by unlicensed individuals), 46.2-1542 & 1561 (failure to maintain temporary and transport tag records) and 46.2-1550 (failure to maintain dealer plate records). Based on the testimony and evidence surrounding the case, the hearing officer recommended that the Board assess a civil penalty of \$100 for each of the five unlicensed motor vehicle sales that the evidence established Mr. Turner completed during July 2002. Also recommended that the Board assess civil penalties of \$250 for the single incident of failing to timely forward materials to DMV within 30 days and \$500 for each instance of a record keeping violation that involved dealer tags, buyers' orders, odometer records and temporary tag or transport tag records. Two instances of each of those types of record keeping violations occurred during 2002. The hearing officer recommended \$500 in sanctions appropriate for the unlicensed sales. Additionally, he recommended penalties for failing to maintain required records aggregate \$2,500. However, Kiln Creek surrendered its dealership license, so the hearing officer recommended the following distinct penalties, (1) imposing all sanctions solely against Mr. and Mrs. Pauley jointly and severally, (2) the Board collect the aggregate \$500 unlicensed sales sanctions immediately and (3) the Board suspend collection of the record keeping penalties that total \$2,500 unless and until either Mr. or Mrs. Pauley apply for another, or reinstated Board issued license before January 30, 2006. If neither Mr. nor Mrs. Pauley applies for a Board issued license before that date, it was recommend that the Board completely waive collection of the \$2,500 civil penalties for the record keeping violations.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Pat Patrick to accept the hearing officer's recommendation. Clyde King seconded.

Substitute motion was made by Hugh McCreight to not accept the hearing officer's recommendation to delay collecting some of the recommended civil penalty as the dealer was found in violation and therefore should pay the recommended civil penalty of \$3,000 (\$500 for the unlicensed sales violation and \$2,500 for the record keeping violations). Bobby Joe Dotson seconded. The motion carried unanimously.

- **Discussion.** Todd Hyman brought up the issue on the merit of the Motor Vehicle Dealer Board having the authority to suspend or revoke a license for a felony without first conducting a hearing. The committee reviewed an overview of the hearing process. General discussion followed.

Consensus of the Committee was not to seek legislation and direct the staff to "fast track" hearings of convicted felons.

- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Bruce Gould reported that there were 4 requests from dealers who requested to store their records off-site, in which all have been approved.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 12, 2004.

The meeting adjourned at 10:18 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, November 10, 2003

Chairman Bobby Joe Dotson called the Dealer Licensing Committee meeting to order at 10:35 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were members Frank Pohanka, Steve Farmer, Rick Hunt, Todd Hyman. (Absent: James Mitchell, Larry Shelor and Robert Woodall) Other members present: Ted Robertson, Pat Patrick, Clyde King, Chris Schroeder, Max Pearson, Hugh McCreight. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Glenn Harlowe represented DMV. Rick Walton represented the Attorney General's Office.

The September 8, 2003 meeting summary was approved.

PUBLIC COMMENT:

There was no public comment.

OLD BUSINESS

Update: September Actions: Peggy Bailey updated the Committee on the following issue that was discussed at the September meeting: At the Licensing Committee meeting on September 8, 2003, the Committee passed a resolution after having considered the hearing officer's report on the following sales consultant. After a formal hearing was conducted the Board reviewed and considered the facts and evidence and passed a resolution to revoke all certificates and licenses issued by the Board to Derrick L. Wayland, Sr. for a violation of Va. Code §46.2-1575(9) having been convicted of any criminal act involving the business of selling vehicles. Mr. Wayland was notified of the Board's decision in a letter dated October 1, 2003. He had until November 3, 2003 to surrender the motor vehicle salesperson's license or appeal to circuit court. Staff has not heard from Mr. Wayland, so the next step is to make the license invalid on the system.

OLD BUSINESS FROM THE FLOOR

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Todd K. Keyser and Select Wheels.** An informal fact-finding conference was conducted on April 10, 2003 referencing Todd K. Keyser and Select Wheels for the alleged violations of VA Code Sections 46.2-1510 (failure to maintain an established location), 46.2-1515 (improperly operating from unspecified or changed location), 46.2-1516 (failure to obtain supplemental license), 46.2-15745(3) (failure to maintain an established location) and 46.2-1575(9) (conviction of criminal act involving sale of motor vehicles). In late July, the original assigned hearing officer resigned from the Dealer Board and at that time, he did not submit a recommendation on this case. The Board reassigned this case to another hearing officer on August 10, 2003. After listening to the recording of the April 10th informal fact-finding conference and reviewing other materials that he deemed relevant to the resolution and evidence surrounding the case, the hearing officer recommended that the Board impose a civil penalty of \$400 for the violation of VA Code Section 46.2-1510(1) and a civil penalty of \$300 for both the violations of VA Code Section 46.2-1575(3) and 46.2-1575(9) totaling \$600. Total civil penalties: \$1,000.

Todd Hyman abstained from the vote for reasons of renting property next to Select Wheels.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Steve Farmer to accept the hearing officer's recommendation. Clyde King seconded. The motion carried unanimously with Mr. Hyman abstaining.

Review and Action: Formal Hearing:

- **Ernest M. Pazmany.** A formal hearing was conducted on May 20, 2003 referencing Ernest M. Pazmany for the alleged violation of VA Code Section 46.2-1575(13) (having been convicted of a felony). Based on the testimony and evidence surrounding the case, the hearing officer recommended that because the criminal acts underlying the convictions occurred in 1997-99. Several years have passed since that time and he has no other convictions. Also, Mr. Pazmany's probation officer reports that he has complied with all requirements of his release and he has paid off early the substantial restitution required of him. Therefore, the hearing officer recommended that the Board grant Mr. Pazmany a salesperson's license.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Frank Pohanka to accept the hearing officer's recommendation. Todd Hyman seconded. The motion passed unanimously.

- **Local Business License Requirement.** Nancy Horn, Commissioner of the Revenue, Roanoke County, discussed issues and questions concerning local business license fees and curbstoning on vacant lots in Roanoke County. General discussion followed.
- **Judgments or Other Findings/Civil Actions Related to the Motor Vehicle Sales Business.** Rick Walton discussed issues relating to civil judgments against applicants for a dealer's license. No where on the application is the applicant's asked to indicate whether any civil actions or civil judgments have ever been rendered against them. All of the questions on the application are tied to criminal or administrative actions that the Board has taken against the person or the dealership. He questioned that perhaps the Board should consider adding a question to the application requesting information on successful civil actions/judgments entered against the applicant. General discussion followed.

General consensus of the Committee is to table this issue until the January 2004 meeting to give staff enough time to present suggestions.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 12, 2004.

The meeting adjourned at 11:19 a.m.

Meeting Summary
Advertising Committee
Monday, November 10, 2003

Vice-Chairman Ted Robertson called the Advertising Committee meeting to order at 11:20 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were members Steve Farmer, Rick Hunt, Hugh McCreight, Pat Patrick, Max Pearson and Chris Schroeder. (Absent: Vince Sheehy and Larry Shelor). Other Board members present: Leo Trenor, Todd Hyman, Frank Pohanka, Clyde King and Bobby Joe Dotson. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Glenn Harlowe represented DMV. Rick Walton represented the Attorney General's Office.

The September 8, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Jeffrey E. Cappel and Victory Nissan of Chesapeake.** An informal fact-finding conference was conducted on August 16, 2003 referencing Jeffrey E. Cappel and Victory Nissan of Chesapeake for the alleged violations of Advertising Regulation 24 VAC 22-30-30-D.1 (failure to provide the proper information to complete the Truth in Lending Act requirements and VA Code Section 46.2-1581.8 (failure to identify a vehicle as to year, make and model that would apply to the advertised statement "3.9% for 60 months"). Based on the testimony and evidence surrounding the case, the hearing officer recommended that the Board impose a civil penalty of \$1,000 for the advertisement in question.

Mr. Bannister spoke on behalf of Victory Nissan and indicated that he is new to Victory and if given the chance, this type of advertising will stop.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Max Pearson to accept the hearing officer's recommendation. Steve Farmer seconded. The motion carried unanimously.

- **Edward H. Fellers and Fellers Chevrolet Oldsmobile.** An informal fact-finding conference was conducted on September 3, 2003 referencing Edward H. Fellers and Fellers Chevrolet Oldsmobile for the alleged violations of VA Code Section 46.2-1581 (unfair, deceptive, or misleading act or practice) and Advertising Regulation 24 VAC 22-30-10 (Intent). Also, it was indicated that if any such transgressions occurred, the Fellers Dealership may have also violated VA Code Sections 46.2-1575(6) (use of deceptive practices) or 46.2-1575(7) (knowingly using deceptive advertising) or

both. Based on the testimony and evidence surrounding the case, the hearing officer recommended that the Board direct staff to send the Fellers Dealership a detailed written warning identifying all transgressions that derived from the advertisements and explaining the potential sanctions if any such problems recur.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Pat Patrick to accept the hearing officer's recommendation. Hugh McCreight seconded. The motion carried unanimously.

- **Art Casey and Casey Auto Group.** An informal fact-finding conference was conducted on August 19, 2003 referencing Art Casey and Casey Auto Group for the alleged violations of VA Code Section 46.2-1581(4) (Terms conditions, and disclaimers shall be state clearly and conspicuously), (9) (Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable), (10) (Advertisements of "dealer rebates" shall not be used) and Advertising Regulation 24 VAC 22-30-10 (Intent). Also, it was indicated that the dealership may have also violated VA Code Sections 46.2-1575(6) (use of deceptive practices or 46.2-1575(7) (knowingly using deceptive advertising) or both. Based on the testimony and evidence surrounding the case, the hearing officer gave four (4) recommendations: (1) that the Board hold that the program as implemented incorporated a form of "dealer rebate" and that portions of the promotional materials were at least "misleading" if not "deceptive" or "unfair", (2) the Board direct staff to issue a written warning to address the problems arising from Casey's Auto's implementation of the cash rewards promotional program, (3) the written warning should address in detail all of the issues that were discussed in the recommendation so that Casey Auto will have guidance on each area of concern and (4) that the dealer did not include a reasonable disclaimer in the "bettering a competitor's price" advertisement and that a written warning should be issued.

Bill Lehner and Alan Truesdale spoke on behalf of Art Casey and Casey Auto Group. They both indicated that there was no intention to mislead the consumer nor was it advertised as a dealer rebate. The dealer conceded that they agreed with the hearing officer's recommendation as to the "bettering a competitor's price" issue. Mr. Casey was in attendance and prepared to answer questions as well.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Pat Patrick to not accept the hearing officer's recommendation. Max Pearson seconded. All in favor: 2 (Patrick and Pearson). Opposed: 5 (Robertson, Farmer, Hunt, McCreight, Schroeder). The motion failed.

Motion was made by Ted Robertson to accept the hearing officer's recommendation. Hugh McCreight seconded. All in favor: 6 (Robertson, Farmer, Hunt, McCreight, Patrick, Schroeder). Opposed: 1 (Pearson). The motion carried.

NEW BUSINESS FROM THE FLOOR

The next meeting will be January 12, 2004.

The meeting adjourned at 12:26 p.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, November 10, 2003

Chairman Steve Farmer called the Transaction Recovery Fund Committee meeting to order at 12:39 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were members: Bobby Joe Dotson, Clyde King, Chris Schroeder and Leo Trenor (Absent: Larry Shelor). Other Board members present: Ted Robertson, Todd Hyman, Frank Pohanka, Rick Hunt, Pat Patrick, Max Pearson and Hugh McCreight. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Glenn Harlowe represented DMV. Rick Walton represented the Attorney General's Office.

The September 8, 2003 summary was approved.

PUBLIC COMMENT:

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Review and Action: Informal Fact-Finding Conference Results:**

Alicia D. Toler and Automax Sales, Inc. Alicia Toler called Automax Sales, Inc, in the early weeks of October 2002 to inquire on a vehicle she saw in an advertisement. In order for her to qualify for a vehicle on credit, she gave her social security number, employment information and address. The next day, the salesperson called her to inform her she qualified for a car; however, she did not qualify for the car she had called about. She was told that in order to purchase the vehicle, she would need to wire money as a down payment, in order to demonstrate her sincerity in wanting to purchase a vehicle from them and to insure that Automax's continued interest in selling her the vehicle on credit. Relying on Automax's representation, she wired \$500 to the manager of Automax. The following day, Ms. Toler had several conversations with the salesperson and indicated that she was no longer interested in purchasing the vehicle from them and demanded that they return her money. She was told to speak with the general manager and he also refused to return her money. Following that conversation, she and a friend drove to Virginia Beach to again demand her money back and she was promptly told that she would have to buy one of their vehicles or lose her deposit. Frustrated, Ms. Toler finally agreed to purchase a 1998 Honda, with a sales price of \$13,825. At this point, she was told she would need to provide another \$500 as additional down payment. In driving the vehicle home to Highland Springs, Virginia, she began experiencing problems with the vehicle. She took the vehicle to Precision Tune in Richmond and was told that the vehicle had been in one or more accidents and had sustained damage to both the front and rear of the vehicle. She took the vehicle back and Automax refused to let Ms. Toler take the vehicle to another repair shop and, in turn, they agreed to fix the problems. She returned home only to experience the same problems. Frustrated, she sought legal counsel to help resolve the problems and the misrepresentations made by Automax in connection with the purchase of the

1998 Honda. On March 26, 2003, the Dealer Board was served with a copy of the Complaint filed in the U. S. District Court with all the appropriate paperwork. On April 3, 2003, the Dealer Board received notice of hearing for Ms. Toler's Motion for Judgment by default against Automax Sales, Inc. On July 25, 2003, the Dealer Board received a certified copy of the Default Judgment awarded to Ms. Toler. On July 29, 2003, counsel for Ms. Toler sent a letter to the Dealer Board indicating that they had redrawn as counsel for Ms. Toler and would be seeking direction from the Richmond Circuit Court as to payment of attorney fees from the Fund. On July 31, 2003, Ms. Toler contacted the Dealer Board and indicated she did not want to proceed against the Fund. On August 4, 2003, counsel sent a letter to the Dealer Board indicating that they had resolved the question of fees with Ms. Toler and would be proceeding with the claim against the Fund. All requested paper work was received on August 13, 2003 and after carefully reviewing the reports and judgment, it is recommended that the Recovery Fund Committee and Board approve Ms. Toler's claim in the amount of \$16,667.29, which is for actual damages in the amount of \$1,168.25 and \$15,499.04 for attorney fees and costs.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Leo Trenor to accept the hearing office's recommendation. Clyde King seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 12, 2004.

The meeting adjourned at 12:52 p.m.